


# ***TR 94/D19 - Income tax: employee work-related deductions within the hairdressing profession***

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This document has been finalised by TR 94/19.



## Draft Taxation Ruling

### Income tax: employee work-related deductions within the hairdressing profession

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#### other Rulings on this topic

IT 2641; TR 92/8; TR 92/20

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*DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.*

## What this Ruling is about

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1. This Ruling deals with the deductions available under subsection 51(1) and subsection 54(1) of the *Income Tax Assessment Act 1936* (ITAA), to employees within the hairdressing profession.
2. Hairdressing salons sometimes provide beautician services. This Ruling does not consider deductions available to beauticians.
3. While employment-related expenses over \$300 in total need to be substantiated by documentary evidence (section 82KZ of the ITAA) to be allowable under subsection 51(1) of the ITAA, this Ruling does not discuss these requirements.

## Ruling

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4. Paragraphs 5 to 30 describe the deductibility of various expenditures incurred by employee hairdressers.

### Travel, seminars and self-education

#### *Travel in the course of employment*

5. Costs incurred in travelling from work and return, in order to perform work-related tasks such as collecting salon supplies and the daily banking are an allowable deduction. This includes travel to and from a home for the aged for the purposes of providing hairdressing services to residents.

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## *Industry-organised competitions*

6. Costs incurred in attending industry-organised competitions are an allowable deduction.

## *Travel from home to work*

7. Costs incurred in travelling from home to work and return are not an allowable deduction.

## *Seminars*

8. Travel, accommodation and other associated expenditure incurred as a result of attendance at a work-related seminar is an allowable deduction where the seminar is designed to update working knowledge or increase proficiency in occupational skills. However, to the extent there exists a private element to the travel (e.g. taking a holiday or visiting relatives), then that proportion is not an allowable deduction.

## *Self-education*

9. In some states, apprentice hairdressers are required to undertake a course of study at a technical college of further education. Costs incurred on tuition and course fees, text books and stationery in relation to this study are an allowable deduction.

10. Expenditure on travel to and from the place of education during the working day is also an allowable deduction.

11. Travel from home to the place of education is deductible where attendance is required first thing in the morning, and travel from work to the place of education is deductible where attendance is required last thing at night (i.e. where the apprentice is not required to return to work that day).

12. Expenditure incurred by a senior hairdresser in attending an advanced hairdressing course conducted by a technical college of further education (or similar) also qualifies as an expense of self-education.

## **Clothing**

### *Corporate uniforms*

13. Expenditure on a **compulsory** corporate uniform is an allowable deduction where the uniform meets the requirements of Taxation Ruling IT 2641.

14. Expenditure incurred on a **non-compulsory** corporate uniform after 30 June 1995 is an allowable deduction provided the uniform has been entered on the Register of Approved Occupational Clothing

administered by the Textiles, Clothing and Footwear Development Authority.

15. Expenditure incurred on a **non-compulsory** corporate uniform before 1 July 1995 is an allowable deduction provided the uniform has been approved in writing by the Australian Taxation Office (the ATO) as a qualifying uniform for the purposes of Taxation Ruling IT 2641. If the uniform has not been approved by the ATO, the uniform must be entered on the Register of Approved Occupational Clothing administered by the Textiles, Clothing and Footwear Development Authority.

***Protective clothing***

16. Expenditure incurred on a plastic (or similar) smock or apron worn by an employee hairdresser to protect conventional clothing from damage, which may otherwise be occasioned in performing hairdressing duties, is an allowable deduction.

17. Expenditure incurred on plastic gloves worn by an employee hairdresser in performing hairdressing duties is also an allowable deduction.

***Conventional clothing***

18. Expenditure incurred on conventional clothing (i.e. ordinary streetwear including stockings and shoes) worn by an employee hairdresser during the working day is not an allowable deduction. This includes the white uniform and shoes which apprentice hairdressers may be required to wear when attending a course of study at a technical college of further education.

**Tools and equipment**

***Hairdressing equipment***

19. Expenditure incurred on an item of equipment for use in performing employment-related duties is an allowable deduction if the cost is less than \$300 or the effective life is less than 3 years. If these conditions are not satisfied then the item must be depreciated rather than claimed as a deduction (subsection 55(2) of the ITAA).

20. Where an item of equipment is also used for private or domestic purposes (i.e. not in the course of performing employment-related duties), the proportion of the cost attributable to the private or domestic usage is not an allowable deduction.

***Technical journals***

21. Costs incurred on technical journals are an allowable deduction.

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## ***Lifestyle (and similar) magazines***

22. Costs incurred on lifestyle (and similar) magazines are not an allowable deduction.

## **Insurance policies**

### ***Income protection and sickness and accident insurance***

23. Premiums paid under an income protection policy or a sickness and accident insurance policy are allowable deductions if the benefits obtained are assessable.

### ***Life insurance***

24. Costs incurred on life insurance premiums are not an allowable deduction.

## **Grooming and accessories**

### ***Grooming***

25. Costs incurred on grooming, including cosmetics, skin care products and hair care are not an allowable deduction.

### ***Watches or timepieces***

26. Costs incurred on watches or timepieces are not an allowable deduction.

### ***Glasses or contact lenses***

27. Costs incurred on glasses or contact lenses are not an allowable deduction.

## **General**

### ***First aid training***

28. Expenditure incurred by an employee hairdresser in attending first aid training is an allowable deduction if the employee is the appointed first aid officer for the salon.

### ***Child care expenses***

29. Expenditure on child care is not an allowable deduction.

## **Explanations**

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30. Whether or not a deduction is allowable for the type of expenditure set out in this Ruling is determined by looking at

subsections 51(1) or 54(1) of the ITAA. If the deduction satisfies subsections 51(1) or 54(1), then other provisions such as the substantiation provisions need to be satisfied. Detailed explanation of the substantiation provisions are not provided in this Ruling.

### **Travel, seminars and self-education**

#### ***Travel in the course of employment***

31. Many decisions of the courts, Administrative Appeals Tribunal (AAT) and Boards of Review have confirmed travel in the course of employment to be deductible expenditure under subsection 51(1) of the ITAA.

32. In *Case M39* (1961) 12 TBRD(NS) 201, the Board held that a hairdresser's motor vehicle running costs which were attributable to his attendance at meetings of the professional institute, to his attendance at product demonstration sessions and to collecting salon supplies were deductible.

#### ***Industry-organised competitions***

33. An employee's attendance at an industry-organised competition results in an increase in his or her occupational proficiency. Expenditure incurred in attending an industry-organised competition is therefore an allowable deduction under subsection 51(1) of the ITAA (*FC of T v. Wilkinson* 83 ATC 4295; 14 ATR 218).

#### ***Travel to and from work***

34. Travel to and from work has been held on numerous occasions to be a private expense and therefore not an allowable deduction under subsection 51(1) of the ITAA.

35. The leading case is *Hayley v. FC of T; Lunney v. FC of T* (1958) 100 CLR 478; 11 ATD 404. This was a judgment of the High Court of Australia.

#### ***Seminars***

36. The deductibility of expenditure incurred in attending a seminar designed to update working knowledge was established by the decision in *FC of T v. Finn* (1961) 106 CLR 60.

37. The deductibility of expenditure incurred in attending a seminar designed to increase proficiency in occupational skills was established by the decision in *FC of T v. Wilkinson* 83 ATC 4295; 14 ATR 218.

38. Attendees of interstate or overseas work-related seminars often take the opportunity to incorporate a holiday (or some other private activity) into their itinerary. Where this occurs, the attendee must make an objective assessment (which must be supported by fact) of

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whether their attendance at the seminar is the dominant purpose of their travel. If attendance is the dominant purpose and their private activity is merely incidental then the airfares are an allowable deduction in full. Conversely, if attendance at the seminar is only incidental to the private activity then only those expenses directly attributable to the seminar are deductible. Expenditure on accommodation, food and travel attributable to the private activity are not an allowable deduction because these are not incurred in gaining or producing the assessable income or are private in nature.

## ***Self-education***

39. A course of study at a technical college of further education falls within the definition of a 'prescribed course of education' for the purposes of section 82A of the ITAA. Subsection 82A(1) provides that where expenditure in connection with a 'prescribed course of education' would otherwise be deductible under subsection 51(1), only the excess over \$250 may be claimed as a deduction.

40. Taxation Ruling TR 92/8 provides an extensive commentary on what qualifies as deductible self-education expenses.

## **Clothing**

### ***Corporate uniforms***

41. A compulsory corporate uniform is one which must be worn as a condition of employment. Generally speaking, a compulsory corporate uniform will qualify where it is unique, distinctive and peculiar to the particular business entity and which has a timeless quality unaffected by short term variations in fashion. Taxation Ruling IT 2641 provides complete details on what is required for a corporate uniform to be either approved by the ATO or eligible for registration with the Textiles Clothing and Footwear Development Authority.

### ***Protective clothing***

42. Various decisions of the AAT have confirmed expenditure on workplace protective clothing to be deductible under subsection 51(1) of the ITAA (eg, see *Case V79*, 88 ATC 550; *AAT Case 4353* 19 ATR 3504).

43. The plastic smock (or apron) and gloves commonly worn by employee hairdressers when performing hairdressing duties satisfy these tests and are therefore deductible.

### ***Conventional clothing***

44. Expenditure on conventional clothing has consistently been held to not have the essential character of an income earning expense or to

be an expense of a private or domestic nature. The essential character test is attributable to the positive limb of subsection 51(1) and the private or domestic test is attributable to the negative limb. Even if expenditure satisfies the positive limb (i.e. being necessarily incurred in gaining or producing the assessable income) it may still not be deductible because of its characterisation as a private, domestic or capital expense (i.e. falling within the negative limb).

45. A relevant example is the decision in *Case U80*, 87 ATC 470. In that case the conventional clothing of a sales assistant (which was required to be worn in the course of performing income-producing activities) was held to be of a private nature and not deductible.

### **Tools and equipment**

#### ***Hairdressing equipment***

46. Expenditure on items of equipment, (such as scissors, combs, hair-dryers etc) which are used by an employee hairdresser in carrying out their employment-related duties, are an allowable deduction under subsection 51(1) of the ITAA. This is because the expenditure is incurred in gaining or producing the assessable income.

47. Where these items are used for private purposes (e.g. personal grooming) then that proportion is not an allowable deduction. This is due to the negative limb of subsection 51(1) of the ITAA which provides that to the extent that expenditure is attributable to private or domestic purposes it shall not be an allowable deduction.

#### ***Technical journals***

48. Employee hairdressers may incur expenditure on magazines and other publications, the content of which is exclusively designed for the hairdressing industry. These technical journals provide up-to date information on hairdressing techniques, hair styles and hair products. Where an employee hairdresser incurs expenditure on technical journals, the expenditure is incurred in gaining or producing the assessable income and is therefore an allowable deduction.

#### ***Lifestyle (and similar) magazines***

49. Lifestyle (and similar) magazines are only of incidental assistance in keeping up to date with hairdressing trends. Where expenditure on this type of magazine is incurred, the expenditure is not an allowable deduction because it is not incurred in gaining or producing the assessable income or is a private expense.

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## Insurance policies

### *Income protection and sickness and accident insurance*

50. Income protection and sickness and Accident policies insure the holder against loss of income due to sickness or accident. The benefits payable under these policies are generally income according to ordinary concepts and are therefore assessable under subsection 25(1) of the ITAA. To the extent the benefits are assessable, the premiums are deductible under subsection 51(1). This principle has been confirmed in a number of decisions of the courts and the AAT, most notably *FC of T v. D.P. Smith* 81 ATC 4114; 11 ATR 538.

51. Where the policy also provides for acapital payment in the event of sickness or accident causing incapacity, the proportion of the premium attributable to this component is not deductible. This is because of the capital exclusion under the negative limb of subsection 51(1) of the ITAA.

### *Life insurance*

52. Expenditure on life assurance premiums are not incurred in gaining or producing the assessable income and are therefore not an allowable deduction under subsection 51(1) of the ITAA.

## Grooming and accessories

### *Grooming*

53. Although hairdressers are required, either implicitly or expressly, by their employers to maintain a high level of personal grooming, the expenditure which is incurred is not an allowable deduction. This is because the expenditure is essentially private in nature. This is consistent with a number of decisions of the AAT. Although these decisions contemplate employees in other employment areas the principle is equally applicable to employee hairdressers.

54. The leading decision is *Case V143* 88 ATC 899; *AAT Case 4608* (1988) 19 ATR 3872. In that case, a marriage celebrant claimed expenses for both personal clothing and cosmetics. Although she was expected to maintain a very high standard of personal grooming for the purposes of her occupation which included the wearing of make-up as part of her overall personal presentation, the claim was not allowed since it was a private expense. The Senior Member referred to the four 'relevant considerations' from *Case U95*, 87 ATC 575 at 580 which he applied to the claims for both clothing and cosmetics and upon which he based his decision:

- (a) 'express or implied requirement of the employer or business, concerning the expenditure';

- (b) 'the extent to which the ...[cosmetics]... are distinctive or unique to the nature of the employment or business having regard to particular, special or accepted work ... requirements, including its availability to be worn by members of the general public';
- (c) 'the extent to which the ... [cosmetics are] ... used solely for work'; and
- (d) 'the extent to which the ... [cosmetics are] ... unsuitable for any activity other than work' (ATC at 905; ATR at 3878).

55. The marriage celebrant fully satisfied the first of the considerations, but failed to satisfy the remaining three. In summing up, it was stated that;

'important though the contribution ... may be to the total presentation of the taxpayer as a marriage celebrant and, despite the fact that neglect in ... these matters may destroy the value in otherwise being well dressed, I am not persuaded that, in any of these matters, the income earning activities put the applicant to any expense such as would not ordinarily and properly be understood as being "private" in character.' (ATC at 906; ATR at 3879).

### ***Watches or timepieces***

56. A number of decisions of the AAT have confirmed that expenditure on watches or timepieces is not incurred in gaining or producing the assessable income and is therefore not an allowable deduction under subsection 51(1) of the ITAA.

57. An example is *Case S82*, 85 ATC 608; 28 CTBR (NS) *Case 87*. In that case a nursing sister was not allowed a deduction for a watch that was used in the course of her employment. The AAT's decision was that the watch was;

'an item of a private nature ... [and] ... The use of a watch or other timepiece ... is important to most people in the community whether it be used ... to ensure not commencing work too early or finishing too late; or to log overtime ... '(ATC at 612; CTBR at 682).

### ***Glasses or contact lenses***

58. Expenditure on glasses or contact lenses is not incurred in gaining or producing the assessable income or is a private expense. A deduction is therefore not available under subsection 51(1) of the ITAA.

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## General

### *First aid training*

59. Due to the nature of the equipment used in providing hairdressing services, injury is sometimes sustained by clients and staff of hairdressing salons. Employers may therefore appoint one or more of their staff to act as first aid officers for the salon. Where this occurs, the expenditure incurred on first aid training by the employee is an allowable deduction. This is because the expenditure is incurred in gaining or producing the assessable income.

### *Child care expenses*

60. The High Court held in *Lodge v. FC of T* (1972) 128 CLR 171; 72 ATC 4174; 46 ALJR 575; 3 ATR 254; that child care expenditure is neither relevant nor incidental to gaining or producing assessable income, and is therefore not deductible. The expenditure is also of a private or domestic nature.

61. This view has been consistently affirmed in later court decisions, most recently by the Full Federal Court in 1991 in *Jayatilake v. FC of T* 91 ATC 4516; 22 ATR 125; 101 ALR 11.

## Date of effect

62. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Commissioner of Taxation

28 April 1994

ISSN 1039 - 0731

ATO references

NO

BO HOB ADVR

Price \$1.10

FOI index detail

reference number

### *subject references*

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*legislative references*

- ITAA 51(1)
- ITAA 54(1)
- ITAA 82A
- ITAA 82AAS(2)
- ITAA 82AAS(3)
- ITAA 82AAT
- SGAA 27(2)
- SGCA

*case references*

- FC of T v. Finn (1961) 106 CLR 60
- Lunney & Hayley v. FC of T  
100 CLR 478; 11 ATD 404
- Lodge v. FC of T. (1972) 128 CLR  
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- FC of T v. Wilkinson 83 ATC 4295;  
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- Case M39 (1961) 12 TBRD (NS)  
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- Case S82, 85 ATC 608
- Case U80, 87 ATC 470
- Case U95, 87 ATC 575
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